IN THE HIGH COURT OF BOMBAY AT GOA
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CRIMINAL WRIT PETITION NO. 22 OF 2004

Kanta Talkatkar,
presently serving
sentence at Central
Jail, Aguada, Goa. ... Petitioner.

Versus

1. State of Goa thro'
   Chief Secretary,
   Panaji, Goa,

2. Inspector General of
   Prisons, Collectorate,
   North Goa, Panaji,
   Goa,

3. The Superintendent
   of Prisons, Central
   Jail, Aguada, and

4. The Chairman,
   Advisory Board,
   Panaji, Goa. ... Respondents.

Mrs. Asha Desai, learned counsel for the petitioner.

Shri S. N. Sardessai, Public Prosecutor for the respondents.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE : 27th April, 2004.

ORAL JUDGMENT (Per Hardas, J.)

Rule returnable forthwith. By consent of the learned counsel for the parties, petition taken up for final hearing at the stage of admission.

2. This is a petition under Article 226 of the Constitution of India filed by the petitioner, who is undergoing a sentence of imprisonment for life for an offence punishable under Section 302, 376 and 392 of the I.P.C. The

sentence commenced from 1st September, 1987. By this petition the petitioner claims that the Advisory Board constituted in exercise of the powers under the Goa Prisons (Review of Sentences) Rules, 1997 did not consider the case of the petitioner for premature release and, therefore, prays for issuance of a writ quashing the said decision.

3. On notice, the respondents have filed an affidavit, annexing at Exh. 'A', the Minutes of the meeting of the Advisory Board held on 25th November, 2002. The Minutes, pertaining to the petitioner, state that the Advisory Board did not favourably consider the case of the petitioner for two reasons:

(i) None of the authorities had recommended the case of the petitioner for premature release; and

(ii) On going through the reports of the various authorities the Board was of the view that the case of the petitioner was not fit for premature release at that stage.

Accordingly, the Board directed that the case of the petitioner would be examined after two years.

4. Mrs. Asha Desai, learned counsel appearing on behalf of the petitioner, has placed reliance on the judgment

of the Supreme Court in **Zahid Hussein & Ors. vs. State of West Bengal & Anr.,** reported in AIR 2001 SC 1312. The Apex Court in paragraph 15 has held:-

> "While coming to the conclusion for possibility of regrouping for anti-social activities, the Review Board did not take into account that the life convicts are in jail for more than 18 years. The Board also did not consider whether there would be any fruitful purpose of confining the convicts any more and also socio-economic condition of their families. Regarding petitioner Md. Talib the Review Board also noted that one co-convict was released prematurely and was murdered in the encounter with other criminals after his release."

5. A perusal of the Minutes of the Meeting of the Advisory Board, reveals that the Advisory board has not ascribed any reasons for declining to consider grant of premature release to the petitioner. The two reasons given by the Advisory Board, according to us, are not germane in as much as they do not reflect the reasons for holding that the petitioner is not entitled for premature release. The paramount factor for exercise of consideration of the case of the prisoner as stated by the Apex Court in **Zahid Hussein & Ors. vs. State of West Bengal & Anr.** (supra), is stated in paragraph 15 of the Report. According to us, the Advisory Board has not given any valid reasons and, accordingly we direct that the case of the petitioner be placed before the Advisory Board for re-consideration in the light of the judgment of the Supreme Court in **Zahid Hussein & Ors. vs. State of West Bengal & Anr.** (supra). The Advisory Board to

re-consider the case of the petitioner within three months from today. We make it clear that the Advisory Board shall apply its mind to the case of the petitioner and shall, independently, decide whether the petitioner is entitled for premature release uninfluenced by any observations made by us while deciding this petition.

6. Rule made absolute accordingly, with no order as to costs.

P. V. HARDAS, J.

D. G. KARNIK, J.

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